

Shoreland Zoning Staff Changes

After the previous issue of the *Shoreland Zoning News*, there have been changes in the organization of the Department of Environmental Protection’s Shoreland Zoning Unit. Long-term staff member, Dan Prichard has left the DEP for a job with the Department of Conservation. Replacing Dan in the shoreland zoning program is Alex Wong. Alex has worked for the DEP for several years in other positions. He worked closely with the Natural Resources Protection Act while serving in the Field Services and Enforcement Unit before accepting a job in the Department’s licensing section.

In an effort to provide greater assistance to municipalities in the southern portion of the state, Alex is working out of the Department’s Southern Maine Regional Office in Portland. Rich Baker remains in the Augusta office, and Val Whittier continues as the shoreland zoning coordinator in the Eastern Maine Regional Office in Bangor. The staff can be contacted by phone as follows:

Rich Baker 287-7730
Val Whittier 941-4581
Alex Wong 822-6328

A friendly reminder:

22 M.R.S.A. §1471-U establishes that the Department of Agriculture, Board of Pesticide Control (BPC) shall maintain a list of municipal ordinances that specifically apply to pesticide storage, distribution or use. In order to accomplish this task, Section 1471-U further states that existing ordinances should have been filed with the BPC by December 31, 1988 and that all new ordinances be filed with the BPC within 30 days of adoption. Any ordinance not filed with the BPC “shall be considered void and of no effect” until the BPC is notified.

“So what?” you ask?

Section 15.F.5 of the Departments *Guidelines for Municipal Shoreland Zoning Ordinances* specifically prohibits the storage of pesticides within the shoreland zone adjacent to great ponds classified as GPA, and rivers and streams that flow into great ponds classified as GPA.

If your towns shoreland or land use ordinance includes this provision, your town should have notified the BPC in compliance with 22 M.R.S.A. §1471-U. If your town has not, please follow up with the BPC. You may contact them at Maine Board of Pesticides Control, 28 State House Station, Augusta, Maine 04333-0028, (207) 287-2731.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY, 17 STATE
HOUSE STATION, AUGUSTA, ME 04333



Department of Environmental Protection
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Shoreland Zoning Unit Augusta (207) 287-2111, Bangor (207) 941-4570, Portland (207) 822-6300

SHORELAND ZONING NEWS

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Please Share

For over ten years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we’ve been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.

Legislative Update

Only one bill (LD 516) that directly amends the Mandatory Shoreland Zoning Act (38 M.S.R.A. § 435-449) was enacted into law by the most recent session of the legislature. That law, which is now in effect, exempts archaeological excavations from shoreland zoning permit requirements if certain conditions are met. The law states that “a permit is not required for an archaeological excavation that is within a shoreland zone as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures”. The text of this law will be incorporated into the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*. A similar exemption has also been added to the text of the DEP administered Natural Resources Protection Act.

Another bill that pertained directly to the shoreland zone was killed after the Department recommended that the issue be addressed through rulemaking, rather than through statute. The bill would have essentially exempted public trails and paths from the setback requirement, regardless of the method of the trail’s construction. The DEP argued that not all public trails should be exempt from setback requirements and that appropriate construction standards should be created through a rulemaking process. The legislative committee handling the bill agreed and directed the Department to adopt appropriate standards. We have begun that process through the development of a stakeholders group. Draft standards should be available by the end of 2001.

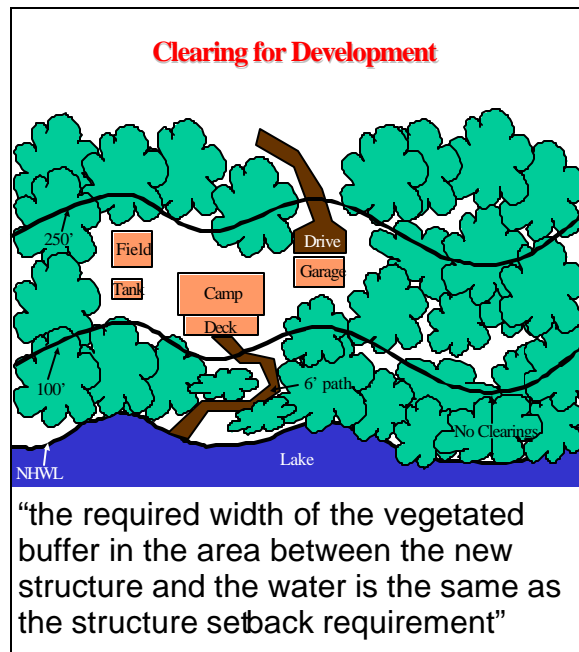
Structure Setback and Vegetative Buffer Requirements: Both Standards Must be Complied With

Nearly all shore front property owners know that new principal and accessory structures must meet water setback requirements. For example, a new structure adjacent to a great pond must be set back at least 100 feet from the normal high water line of the pond. Adjacent to a river or tidal water the setback requirement is usually 75 feet. Of course, these distances are always measured horizontally.

What may not be as well known to landowners is that the required width of the vegetated buffer in the area between the new structure and the water is the same as the structure setback requirement. Adjacent to a great pond the structure must be setback at least 100 feet. The vegetated buffer must also be at least 100 feet. Often times, the landowner or builder may not link the two requirements, thus failing to plan adequately.

The applicant or builder tends to measure the proper structure setback distance, and places pins or stakes at that location. That location then becomes the setback line for the foundation, with little thought for main-

taining the required buffer width. Not only will the eaves of the house protrude into the setback area, but the builder will most likely cut into the buffer for storage of excavation material and for movement/placement of his or her equipment. The result is that the vegetated buffer is not maintained to proper standards. Instead, the buffer width is reduced and replaced with 25 feet or so of lawn.



In reviewing an application for a new structure in the shoreland zone, the Department encourages municipal reviewing authorities to ask about the area that will be cleared for construction as well as the area to be cleared for lawn. Ask if there area

any plans for a deck in the future. If so, be sure the proposed structure will accommodate the deck outside the setback area, and still maintain the necessary buffer. Remember that the “clearing of vegetation for development” standards are as important to uphold as are the structure setback standards.

Prior planning will prevent poor performance.



Questions and Answers



Question: I have always considered the large satellite dish antennas, whether of solid or mesh construction, to be structures that are subject to water setback requirements. However, the new generation of antennae are much smaller and are not nearly as visible. Must these smaller dish antennas meet water setback requirements?

Answer: No. The Federal Communications Commissions has issued a rule that exempts satellite dish antennas that are less than 39 inches in diameter from certain requirements. The DEP views this ruling as preventing municipal officials from prohibiting the installation of a small dish antenna within the water setback area.

Question: A camp owner has approached me for a permit to remove a rotting deck and replace it with a new one of the same size and in the same location as the existing deck. The deck is attached to the water-side of a nonconforming camp. I don't believe that I can issue a permit to remove the deck and replace it with a new one since it does not meet the water setback and is being removed by more than 50% of its market value. Am I correct in telling the applicant that the deck must be rebuilt meeting the setback requirement to the greatest practical extent?

Answer: If the deck is attached to the camp you are probably wrong. The deck, if attached, would be considered to be part of the principal structure. Therefore, removing the deck alone will not result in the removal of more than 50% of the market value of the structure (the camp and deck together). You, as the code enforcement officer can issue a permit to rebuild the deck.

Question: The same camp owner has a dilapidated stand-alone boathouse for his sailboat at the water's edge. Can he completely tear the boathouse down and rebuild it in place?

Answer: Since the legislature has declared that recreational boat storage buildings are not water-dependent, the boathouse must be reconstructed meeting the setback requirement to the greatest practical extent. If there is room on the property to locate the new boathouse further from the water, the planning board must require the applicant to construct the new boathouse in that location. Remember, if there is any significant soil disturbance within 100 feet of the water body, as part of the project, the applicant must also obtain a permit from the Department of Environmental Protection.

Got a shoreland zoning question or issue you'd like to share with others? The Question and Answer section of the *Shoreland Zoning News* is a good forum for spreading the word. Just drop a note or a telephone message to the shoreland zoning staff at the DEP, and we'll try to include it in an upcoming newsletter.